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## BOOK REVIEWS

INTERNATIONAL LAW CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES. By Charles Cheney Hyde. (Boston: Little, Brown and Company, 1922. Two Volumes.)

It is a significant fact that coincident with the effort of the United States to detach itself from world politics there should appear from the pen of American scholars two outstanding works on international law. In his *International Law and the World War, 1920*, Professor Garner presented in serviceable and judicious form a comprehensive treatment of the legal problems arising from that momentous conflict. Follow now the volumes of Professor Hyde more extensive in scope yet distinctive in their purpose to present the interpretation of the law of nations by the United States.

These two volumes, in the language of the author, "embody the results of a study of international law chiefly as it has been interpreted and applied by the United States. They express an attempt primarily to portray what the United States, through the agencies of its executive, legislative and judicial departments, has deemed to be the law of nations." Little sacrifice of the general subject matter of international law has been made, however, through this method of approach. In the course of its history the United States has, at one time or another, encountered well-nigh all the problems of interstate relations which fall within the domain of law. Quite true it has been exempt from certain political policies practiced by European states to which publicists on international law usually direct some attention; it has not been a party to a balance of power arrangement, nor has it until recently sat in "concert" with the great powers to determine the fortunes of other states. But it has withal the Monroe Doctrine which in essence is the same as the conduct noted above and equally as difficult for publicists to reconcile with some of the cherished tenets of state equality and independence. In reality, therefore, Professor Hyde's work with respect to content may be accepted as a general treatise on international law and as he properly observes the American interpretation of this law "is entitled to thorough examination and critical analysis; for it constitutes the only scientific basis for the formulation of principles in reliance upon which the United States, whether at the Hague or elsewhere, may participate intelligently and worthily in the common effort to render the law of nations closely responsive to the just and changing demands of civilization."

This examination of the attitude of the United States upon questions of international law has been accomplished by Professor Hyde in an exhaustive, scholarly and highly satisfactory manner. His work is based on American Diplomatic correspondence, decisions of the Supreme Court and the lesser American tribunals both Federal and State, Acts of Congress and numerous publications of the Government which reflect an official and authoritative viewpoint. The illustrative material is well chosen and ably interpreted, its arrangement is logical and convenient. The work is a handsome contribution to American scholarship. It is, moreover, of immeasurable value at the present time bringing together as it does a body of law which has recently been subjected to diverse

interpretations, no little disregard, and in some quarters to a wholesale condemnation as to its effectiveness in governing the relations of states. As the writer says "it is now recognized on all sides that the welfare of each member of the family of nations, and, therefore, of international society itself, demands fresh enunciation, by codification or otherwise, of the principles of law that are hereafter to govern the conduct of States." (I. p. 3.) In the light of such enunciation as is given in the present work one is able better to appraise the genuine worth of international law, to focus criticism on its deficiencies and to receive stimulation for its further development.

The fundamental relations of states in peace and war are adequately treated in these volumes. The author has quite properly assumed a positivist's attitude in setting forth the actual conduct of the United States as indicative of a definite interpretation of international law but has not failed to analyze this conduct with reference to broader principles nations. Thus with respect to neutrality he writes: "The evolution of accurate resumé of the contributions of a powerful state to the law of nations combined with a critical attitude worthy of much consideration. The writer has in addition given proper recognition to the more recent conceptions in international thought provoked by the World War which cannot fail to influence profoundly the future development of the law of nations. Thus with respect to neutrality he writes: "The evolution of the law of neutrality was not retarded by the War which began in 1914. That conflict served, however, not only to emphasize the insufficiency of many of the rules previously accepted with complacency, but also to raise the broad question whether the very theory of neutrality, howsoever interpreted, continued to offer to the international society as large safeguards and benefits as might be derivable from general participation in war against the particular belligerent which without reason unsheathed the sword." Follows then the query as to whether the ends of international justice cannot best be attained "by advocating anew full respect for all that the principle of neutrality appears to entail, rather than acquiescing in a plan contemplating a degree of participation in future wars between states." (II. p. 697.)

Writing on the recognition policy of the United States, Professor Hyde finds that "At the present time the United States is believed to be reluctant to recognize as a *de jure* government one which has attained the ascendancy by force and in defiance of a local constitution, in the absence of convincing proof that the change is supported by popular approval." (I. p. 70.) This doctrine of constitutionalism so rigorously adhered to by President Wilson in relations with Mexico and Russia projects a new element into recognition policy significant of the broadening interest of one state in the internal affairs of another.

Couple with this another innovation of President Wilson which affords Professor Hyde the arresting title of "Communications through Non-Governmental Channels" and we have additional evidence of the increasing intimacy of international relations. Summarizing the effects of President Wilson's appeal to the Italian people over the Fiume controversy and of Lord Grey's statement for American consumption concerning reservations to the Treaty of Versailles, the following comment is made: "The foregoing instances illustrate more than the innovation which they

record. They reveal the fact that at the present time information of such vital concern to a foreign state as to be likely to influence its conduct will necessarily be brought home to it by the straightest path and through the simplest means; and that when any conventional channel seems for any reason to obstruct rather than facilitate the communication of intelligence of such a kind, other means of enlightenment will be employed." (I. p. 711.)

With respect to the League of Nations and the legal relationships created thereby, Professor Hyde does not assume the intolerant attitude of the present American Government and provisions of the Covenant are frequently alluded to and explained. It is carefully pointed out, however, that from these contractual agreements the United States at the present time admits no modifications of the general body of international law. This statement of fact is, of course, a proper one and only a future commentator will be able to say whether or not the United States through its failure to accept the principles of the League placed itself in opposition to the general consensus of international society.

Unlike many publicists on international law the present writer has not confined himself solely to the relations of states which involve a public interest and there are numerous sections of the work which will aid the practitioner in handling private claims of an international nature. Conspicuous in this respect are the treatments of such questions as nationality, the presentation and prosecution of private and corporation claims through the proper channels and the grounds upon which government support may be expected.

Professor Hyde has written a distinguished work which will receive immediate and widespread recognition.

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THE SPIRIT OF THE COMMON LAW, by Roscoe Pound, Dean of the Harvard Law School. (Boston: Marshall Jones Co., 1921, pp. xiv, 224.)

Dean Pound deservedly has caught the eye and ear of a contemporary bench and bar to a degree heretofore unknown in America. It is probable that no living man exerts so profound an influence in this field. If for this, reasons are sought they can be found in those things that lie behind the little book on "The Spirit of the Common Law", which in its 224 pages contains the essence of a veritable library of legal history and philosophy. The book with its many examples of brilliant generalization, historical comparison and synthetic deduction could come only from a mind with the widest of horizons. The manner in which Dean Pound draws upon a seemingly inexhaustible store of learning for a steady succession of manuscripts makes one think of the fable in which the god Thor, at the behest of the giant in the castle of Utgard Loke, attempts to drain the giant's drinking horn at a draught, with the resulting discovery that there was an invisible connection with the waters of the great North Sea that made the feat impossible. In this book one finds revelation of those elements which have made it possible for Dean Pound to influence, as perhaps no other does, the trend of thought in the legal world.